



Comptroller General
of the United States

Washington, D.C. 20548

Bednarz
144396

Decision

Matter of: UpSide Down Productions

File: B-243308

Date: July 17, 1991

Al Qulovers for the protester.

Kenneth A. Markison, Esq., Department of Housing and Urban Development, for the agency.

Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected as nonresponsive a bid that acknowledged an amendment to the solicitation but failed to submit prices for the option year that was added by the amendment, where the invitation for bids required such prices and provided that they would be evaluated for award.

2. Protest that agency failed to disseminate a complete solicitation amendment, but only the first page, is denied where that page clearly indicates that the amendment consists of multiple pages and the protester's assertion is otherwise contradicted by the record.

DECISION

UpSide Down Productions protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DU100C910016686, issued by the Department of Housing and Urban Development, for the acquisition of video and related services.

We deny the protest.

The agency issued the IFB on November 30, 1990. The first amendment, a 13-page document issued on December 27, 1990, replaced the original bid pricing sheets, added a third option period and a companion pricing sheet, and extended the bid opening date from January 3 to January 14, 1991. The second amendment, a one-page document issued on January 14, 1991, extended the bid opening date to January 17, 1991.

The agency sent the solicitation and amendments to 84 firms, whose names were on the bidder's list because they responded to the IFB's synopsis in the Commerce Business Daily. The agency did not mail either the solicitation or amendments to UpSide Down, as its name did not appear on the bidder's list.

UpSide Down submitted its bid on January 17, 1991. On March 4, 1991, the agency found UpSide Down's bid nonresponsive based upon its failure to comply with the requirements added by amendment No. 1. Specifically, although UpSide Down acknowledged this amendment, only the first page of amendment No. 1 accompanied the protester's bid and it did not utilize the amended bid pricing sheets. As a result, the protester failed to submit prices for the third option period. Thus, the agency determined that the protester was nonresponsive.

To be responsive, the bid as submitted must represent an unequivocal offer to comply with the amended IFB's material terms, which include the requirement for a firm, fixed-price. Cooper Sportswear Mfg. Co., Inc., B-238998.5, Sept. 18, 1990, 90-2 CPD ¶ 225. The requirement for fixed prices extends to options where, as here, the IFB requires bidders to price the option services and provides that the agency will evaluate such prices in making award. Areawide Servs., Inc., B-240134.4, Sept. 4, 1990, 90-2 CPD ¶ 182. A bidder's failure to submit requested prices for the option year causes doubt as to the intended option prices or whether the bidder has obligated itself to perform the option services. Larry's Inc., B-230822, June 22, 1988, 88-1 CPD ¶ 599. Mere acknowledgement of the amendment, which adds the contract options, does not constitute a bid for the added services, because the bid as submitted does not reflect the additional requirements of the amended bid schedule.1/ Areawide Servs., Inc., B-230822, *supra*; Pacer Contracting Corp., B-241644, Feb. 20, 1991, 91-1 CPD ¶ 193. Thus, although UpSide Down acknowledged amendment No. 1, its failure to submit prices

1/ A bid which fails to price certain amended line items may nevertheless be responsive, where, (1) the bid itself reveals a consistent pattern of pricing indicating the intended price, or (2) where the unpriced item is divisible from the original solicitation requirements, is de minimus to the total contract value, and is irrelevant to the competitive standing among bidders. See Areawide Servs., Inc., B-240134.4, *supra*; Larry's Inc., B-230822, *supra*. Neither exception encompasses UpSide Down's omission because the unpriced third option period succeeds a random pattern of pricing and because it constitutes approximately 25 percent of the total contract value.

for the option year added by that amendment required the agency's rejection of its bid as nonresponsive.

Alternatively, UpSide Down blames the agency for the defect in its bid, claiming that the agency violated its duty to provide solicitation materials. The protester alleges that it specifically asked the contract specialist to include its name on the bidder's list and repeatedly complained of its failure to receive any mail pertaining to the solicitation. UpSide Down asserts that, owing to the agency's neglect, it sent a company representative to the procurement office to obtain copies of both amendments, but the contract specialist provided the firm's representative with an envelope containing only the first page of both amendments.

The agency claims that UpSide Down failed to apprise its procurement office of the firm's interest in the solicitation to assure inclusion on the bidder's list. The agency states that it was unaware of UpSide Down's interest until January 14, 1991, when the firm's representative attempted to submit its bid pursuant to the bid opening date as revised by amendment No. 1. The contract specialist inquired how UpSide Down had obtained copies of the solicitation and the first amendment when its name did not appear on the bidder's list, and the firm's representative answered that another vendor had furnished copies. The agency denies any other contact with UpSide Down regarding this procurement before bid opening.


The Competition in Contracting Act of 1984, 41 U.S.C. § 253(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, which includes the use of reasonable methods in disseminating solicitation documents to prospective competitors. North Santiam Paving Co., B-241062, Jan. 8, 1991, 91-1 CPD ¶ 18. As a specific duty in this regard, the Federal Acquisition Regulation (FAR) requires that the agency include on the source list the name of any prospective bidder who has requested an invitation, so that the bidder may also receive copies of any solicitation amendments. FAR § 14.205-1(c); Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Concurrent with the agency's duty to disseminate solicitation documents, prospective contractors must also avail themselves of every reasonable opportunity to obtain these documents, especially in a sealed bid procurement. North Santiam Paving Co., B-241062, supra.

In the present case, we are not persuaded that UpSide Down availed itself of every reasonable opportunity to obtain the solicitation documents. UpSide Down's bid included only the first page of amendment No. 1, which clearly indicates in the top right margin that it is "1 page of 13 pages." In light of this notation, UpSide Down reasonably could not have assumed,

as it did, that the document was complete and should have taken additional steps to assure it had a complete document.

Moreover, we do not find credible UpSide Down's claim that it was belatedly supplied only the respective first pages of the amendments when its representative confronted the procurement office. As the agency issued amendment No. 2 on January 14-- the bid opening date established pursuant to amendment No. 1-- the protester could not have simultaneously obtained the amendments before that date. Yet the protester fails to explain how it learned that bid opening had been extended beyond January 3 without a copy of amendment No. 1, nor does it explain why it did not obtain a copy of that amendment before January 14. Indeed, even though the revised January 14 bid opening date was not mentioned on the first page of amendment No. 1, UpSide Down was apparently aware of the revised date. Thus, we are not persuaded that the protester made numerous contacts with the agency to secure solicitation materials or inclusion on the bidder's list, or that the agency only provided the protester with an incomplete copy of amendment No. 1.

The protest is denied.


for James Hinchman
General Counsel